

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**JOHN C. FAHNER, Estate of,
by SHIRLEY FAHNER,
As Personal Representative,
Plaintiff,**

CIVIL ACTION NO. 08-cv-14344

DISTRICT JUDGE PAUL D. BORMAN

vs.

MAGISTRATE JUDGE MONA K. MAJZOUN

**WAYNE, COUNTY OF,
et al.**

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUBSTITUTED SERVICE
(DOCKET NO. 144)

This matter is before the Court on Plaintiff's Motion For Substituted Service filed on July 13, 2010. (Docket no. 144). Defendants filed a Response To Plaintiff's Motion For Alternate Service on July 22, 2010. (Docket no. 153). The matter was referred to the undersigned for determination pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 147). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(f). This motion is ready for ruling.

Plaintiff moves for an order permitting substituted service on Defendant and former Wayne County employee Bernadine Tuitt-Hill¹. (Docket no. 144). Plaintiff has made specific allegations regarding the nature of its attempts to serve Ms. Tuitt-Hill, including that Plaintiff's counsel has traveled to her residences, deposed family members and subpoenaed documents from licensing authorities in an attempt to locate Ms. Tuitt-Hill. These issues were also developed at a June 28,

¹The Court herein incorporates the background relating to the attempted service of Defendant Tuitt-Hill as set forth in its Order Granting Plaintiff's Ex-Parte Motion For Issuance Of Second Summons And Denying Defendant's Objection To Plaintiff's Request For Issuance Of Second Summons And Motion To Quash entered on June 23, 2010, docket no. 137.

2010 hearing on other motions in this action. Defendants in their Response state that they have no position on the Motion for Alternate Service other than the means should be reasonably calculated to give Defendant Tuitt-Hill actual notice of the proceedings and an opportunity to be heard. (Docket no. 153). Defendants also mention rumors that Defendant Tuitt-Hill may be living out of the country in Canada or Trinidad and Tobago. Defendants do not otherwise substantiate these “rumors.”

Plaintiff shows by its brief and attachments that through its counsel, Plaintiff has taken the following steps to locate and attempt service on Defendant Tuitt-Hill:

1) Traveled to one of the last known addresses of Defendant Tuitt-Hill (R. Miller Aff. at docket no. 144-2);

2) Requested change of address information (including one subpoena seeking related information) from the Post Office for two different addresses and a postal box connected to Defendant Tuitt-Hill (docket no. 144-4, 144-10, 144-14);

3) Requested Defendant Tuitt-Hill’s last known address and other contact information from Defendant County, a former employer of Defendant Tuitt-Hill (docket no. 144-7);

4) Hired a private investigator to locate Defendant Tuitt-Hill and her family members and her former husband and business partner, Ira Hill (docket no. 144-6);

5) Sought information regarding the status of Defendant Tuitt-Hill’s nurse’s license from the Michigan Department of Labor and Economic Growth (docket no. 144-8, 144-9, 144-11);

6) Deposed Defendant Tuitt-Hill’s brother Carlos Tuitt, who was described as “evasive” throughout the deposition, as to the whereabouts and contact information for Defendant Tuitt-Hill

and deposited the holder of the P.O. Box which was connected to Defendant Tuitt-Hill's nursing license (docket no. 144-16, 144-17); and

7) Ran a Comprehensive People Finder report which linked Defendant Tuitt-Hill to her sister's address in Brooklyn, New York, where a utility had been activated in Defendant Tuitt-Hill's name at the residence of her sister Lynette Tuitt and a Lexis report that also links Defendant to her sister's address in Brooklyn (docket nos. 114-18, 114-19, 114-20, 114-21); Plaintiff alleges that phone calls to that address have not been answered and a process server spoke with someone who denied knowing Defendant Tuitt-Hill but did not confirm her own identity (docket no. 144-24); and

8) Subpoenaed Ira Hill, agent for service of process and a limited partner with Defendant Tuitt-Hill of IJHBTH Family Limited Partnership, which is an active domestic limited partnership (docket nos. 144-25, 144-26).

Rule 4(e)(1), Fed. R. Civ. P., provides that "[u]nless federal law provides otherwise, an individual . . . may be served in a judicial district of the United States by (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Mich. R. Civ. P. 2.105(I)1 provides that "[o]n a showing that service of process cannot be reasonably made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." Plaintiff has shown that service cannot reasonably be made as provided in Fed. R. Civ. P. 4.

Plaintiff has proposed several methods for alternate service. The Court finds that the method set forth in MCR 2.105(B) for substituted service of process is reasonably calculated to give Defendant Tuitt-Hill notice of this action. This method for service on a nonresident individual

provides for “serving a summons and a copy of the complaint in Michigan on an agent . . . of the defendant” and “sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address.” MCR 2.105(B)(1). The Court finds that the evidence presented with Plaintiff’s Motion shows that most current and reasonably likely address for Defendant Tuitt-Hill is at the Brooklyn resident with her sister. The Court will order that substituted service may be made by the methods set forth below.

IT IS THEREFORE ORDERED THAT Plaintiff’s Motion for Substituted Service (docket no. 144) is **GRANTED**.

IT IS FURTHER ORDERED THAT substituted service upon Defendant Bernadine Tuitt-Hill shall be effected by the following:

- 1) Plaintiff’s counsel mailing a copy of the summons and complaint and a copy of this order by regular First Class mail and by registered mail addressed to Defendant Tuitt-Hill at the last known address of 2901 Avenue I, Apartment 6F, Brooklyn, NY 11210-2914; and
- 2) Plaintiff’s counsel having a copy of the summons and complaint and a copy of this order served on Ira J. Hill, as agent for IJHBTH Family Limited Partnership, 20250 Heyden St., Detroit, Michigan 48219; Ira Hill’s last known address is 2400 London Drive, Troy, Michigan 48205.

IT IS FURTHER ORDERED THAT Plaintiff’s counsel, as proof of service on Defendant Tuitt-Hill, shall certify to the Court after receipt of any signed return receipt or after suitable time for return of any undelivered First Class mail (1) the date of the mailing of the summons and

complaint and copy of this order in compliance with this order, (2) whether any signed returned receipt was received, and/or (3) whether any undelivered First Class mailing was returned.

IT IS FURTHER ORDERED THAT Defendant Tuitt-Hill's deadline for filing an answer to the complaint shall be twenty-three (23) calendar days from the date of the mailing by Plaintiff's counsel or the next business day if the 23rd day falls on a weekend or federal holiday.

IT IS FURTHER ORDERED THAT if Defendant Tuitt-Hill fails to answer or file another suitable motion within 23 days from the date of mailing, Plaintiff's counsel may seek a clerk's default against Defendant Tuitt-Hill and thereafter a default judgment if the clerk's default is not set aside.

IT IS FURTHER ORDERED THAT the time for Plaintiff to serve Defendant Tuitt-Hill is extended from July 23, 2010 (docket no. 137) to September 17, 2010.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: July 28, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: July 28, 2010

s/ Lisa C. Bartlett
Case Manager